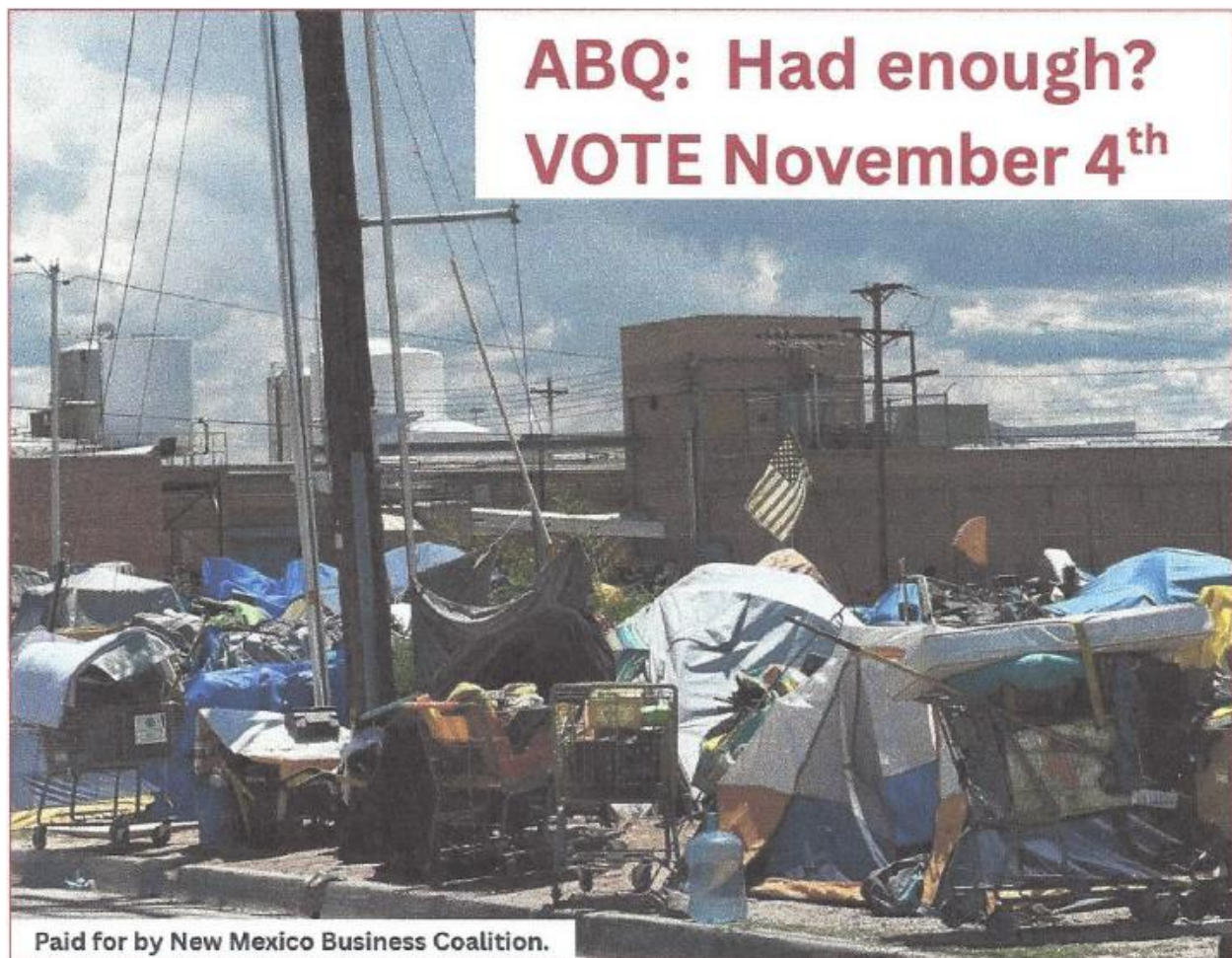


## ALBUQUERQUE BOAD OF ETHICS AND CAMPAIGN PRACTICES

### ADVISORY OPINION #AV 07-2025

September 10, 2025

**QUESTION:** The requester, Carla Sonntag, on behalf of the New Mexico Business Coalition (“NMBC”), seeks an advisory opinion on whether NMBC “can use communication mediums like billboards, social media, and print and digital ads to encourage nonpartisan voter registration and election participation for the upcoming November 4th municipal election in Albuquerque, without registering as a [Measure Finance Committee].” The requester has provided a sample advertisement, reproduced below:



NMBC represents that it is a 501(c)(4) organization that “has been in operation since 2009 and was neither formed nor operates for the sole purpose of influencing municipal, state, or national elections to benefit or oppose any specific candidates, ballot questions, or referendums.” It further represents that it “relies on member dues and donations to its general fund for operations and does not solicit money to influence elections.”

In seeking the Board's guidance, NMBC has elaborated on the broad question above as follows:

1. In general, please confirm that expenditures of more than \$250 from NMBC's General Fund for GOTV ads that are limited strictly to nonpartisan voter participation and do not mention any candidate or ballot issue will, or will not require NMBC to register as a Measure Finance Committee.
2. Specifically, please confirm that the ad in Exhibit #1 will, or will not require NMBC to register as a Measure Finance Committee based on the 2025 Rules by the Albuquerque City Clerk for the Election Code and the Open and Ethical Election Code of the City Charter. Note: more than \$250 will be spent out of the NMBC general fund to publish the ad, (Exhibit #1).
3. If the determination is that NMBC would not be required to register as an MFC, please confirm the disclaimer in Exhibit #1 is sufficient, and NMBC is not required to expand the disclaimer to include top five donors and secondary donors.

(emphasis in original).

#### CONCLUSION:

The proposed advertisement would require NMBC to register as a Measure Finance Committee.

#### ANALYSIS:

The principal Charter provision at issue is Article XIII, Section 4(d)(1)(B), which defines a "Measure Finance Committee" as:

a political committee or any person or combination of two or more persons acting jointly in aid of or in opposition to the effort of anyone seeking to have their name placed on the ballot for city office, a petition to place a measure on the ballot pursuant to Article III of this Charter, voter approval or disapproval of one or more measures on the ballot and/or the election to, or recall from, office of one or more candidates for office when such person or people have accepted contributions in excess of \$250 or make expenditures in excess of \$250 for any of the purposes listed heretofore.

Part 8(A) of the 2025 Rules for the Election Code and the Open and Ethical Election Code elaborate on this definition, specifying that a Measure Finance Committee includes:

1. Any separate or segregated fund established by any corporation, membership organization, cooperative, labor organization or other organization **whose purpose is to initiate or influence a campaign** or election; and
2. Any organization, including any corporation or association, whose major purpose is **initiating or influencing a campaign** or election and that receives

- Contributions or makes **Expenditures aggregating more than \$250** for that purpose; [or]
3. Any organization whose major purpose is not influencing candidate or ballot measure elections but that receives Contributions or makes Expenditures aggregating **more than \$250** for the purpose of influencing the **nomination or election of any candidate or political office**.

(emphasis in original). The Rules further specify that “[a]dvocacy, charitable, or other organizations that are interested in **raising and spending money** to influence the election of a candidate, a ballot question or referendum are **required to form an MFC** for that purpose, and file campaign finance disclosure reports with the City Clerk.” 2025 Rules Part8(B) (emphasis in original).

In considering whether an advertisement seeks to “influence a campaign or election,” context may be considered. *See* 1.10.13.7(I) NMAC (defining “[e]xpressly advocate” as including “a campaign slogan or words that in context and with limited reference to external events, such as the proximity to the election, can have no reasonable meaning other than to advocate the election, passage, or defeat of one or more clearly identified ballot questions or candidates.”); 11 C.F.R. § 100.22 (defining “[e]xpressly advocating” to include communications that “[w]hen taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because (1) The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and (2) Reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action.”); *see also* *Republican Party of N.M. v. Torrez*, 687 F. Supp. 3d 1095, 1154-55 (D.N.M. 2023) (rejecting constitutional challenge to 1.10.13.7(I) NMAC) (“Here, even though the expressly advocate definition covers some speech that might not fall under the category of express advocacy, the definition should nevertheless be upheld based upon ‘the public’s interest in “knowing who is *speaking about a candidate* shortly before an election.”’”) (emphasis in original) (quoting *Williams*, 812 F.3d 787, 796 (10th Cir. 2016)); *Vermont Right to Life Cmte., Inc. v. Sorrell*, 758 F.3d 118, 130-31 (2d Cir. 2014) (“In other words, if an organization ran an advertisement ‘for the objective purpose of persuading someone’ to vote for or against a candidate, but the advertisement did not identify a candidate in that election, it could still fall within Vermont’s definition of “influencing an election,”” and rejecting vagueness challenge to definition of “expenditure”) (quoting *Vermont v. Green Mountain Future*, 86 A.3d 981, 998. (Vt. 2013)).<sup>1</sup>

Here, NMBC stipulates that the dollar threshold to require registration as a Measure Finance Committee would be met, so the issue is whether the proposed expenditure is “in aid of or in opposition to the effort of anyone seeking to have their name placed on the ballot for city office, a petition to place a measure on the ballot pursuant to Article III of this Charter, voter approval or disapproval of one or measures on the ballot and/or the election to, or recall from,

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<sup>1</sup> The Election Code also includes a definition of “express advocacy,” but that definition is only used in the context of independent expenditures. *See* Charter art. XIII, § 2(q) (defining “Express Advocacy”); Charter art. XIII, § 2(v) (defining “Independent Expenditure” in terms of “express advocacy”). An organization may have to register as a Measure Finance Committee even if it does not engage in “express advocacy.” *See* Charter art. XIII, § 2(y).

office of one or more candidates for office,” *see* Charter art. XIII, § 2(y), i.e., is “for the purpose of influencing the **nomination or election of any candidate or political office**,” 2025 Rules Part 8(A)(3) (emphasis in original), or, alternatively, whether NMBC’s “major purpose is **initiating or influencing a campaign** or election . . . .” *See* 2025 Rules Part 8(A)(2).

The proposed advertisement identifies an issue (homelessness), not through words, but in the selection of the photograph. The text, although brief, implies a clear anti-incumbent sentiment (“Had enough? VOTE Nov. 4”). Although the request makes reference to “nonpartisan voter registration and election participation,” it bears noting that the proposed advertisement does not reference voter registration, *see* Proposed Advertisement above, and that Albuquerque municipal elections are nonpartisan. *See* NMSA 1978, § 1-22-3(B) (2019) (“A regular local election shall be a nonpartisan election, and the names of all candidates shall be listed on the ballot with no party or slate designation.”).

Because the proposed advertisement is for the purpose of influencing the nomination or election of any candidate or political office (“Had enough?”), should NMBC engage in the proposed expenditures, it would have to register as a Measure Finance Committee.